O. Road Transport/51

1951.

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File No.

Legal Department

A **BRANCH**

Subject:— Opinions under the Road Transport Corporation Act, 1950

P-20 E

File No. O. Road Transport/51

Gen. 194 c.

12-17

C O N T E N T S.

Legal Department File No. O.Road Transport/51.

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Sr. NO.	R.I./O.No.	Subject.	Pages.
	O No.18556 20.11.51.	Whether under the provisions of the Act, it would be feasible for Govt. to establish Divisional claims Settlement Committees and a Provincial claims Settlement Committee -----	35-36.

V.M.D./28.6
5c.

Legal Department.
25307/2812.12.50.

The Board of the Bombay State Road Transport Corporation has passed a resolution suggesting the appointment of Joint Area Committees whose functions will mainly be to advise the Corporation on different matters relating to transport. (See p. 5 ante.). The Motor Transport Controller has sought for the approval of Government to the proposed appointment under clause 15(2)(h) of G.M.G.D. No. 1780/5 dated 16.11.1949. In view of the enactment of the Road Transport Corporation Act, 1950, the H.D. has raised a doubt whether the proposed committees can be appointed by the Corporation in exercise of the power conferred by the Notification dated 16.11.1949. The R.L.A. is requested to advise.

Sd/-

V.M.D./27.6
4c.

Office of the R.L.A.

Section 47 of the Road Transport Corporation Act, 1950 (Act LXIV of 1950) provides that "the body known as the Bombay State Road Transport Corporation and the Board thereof referred to in the Notification of the Government of Bombay, No. 1730/5, dated the 16th November 1949 (hereinafter referred to as "the existing Corporation" and "Board" respectively) shall, notwithstanding any defect in, or invalidity of, the enactment or order under which they were constituted, be deemed for all purposes to have been validly constituted as if all the provisions of the said notification had been included and enacted in this section and this section had been in force continuously An and from the said date," and that accordingly certain consequences shall follow. It is possible to take the view that this provision in effect preserves the provisions of the Notification for all purposes. However, looking to the provision as a whole, it seems that they have been preserved for giving validity to the constitution of the Corporation zand the Board. The point is thus not free from doubt, and it would not, therefore, be advisable to make the appointment of a Joint Area Committee under clause 15(2) (h) of the Notification, more so since it is contemplated that a new Corporation should be established under section 3, and thereupon section 17 of the Road Transport Corporation Act, 1950, would come into play.

Sd/- P.H.Lad.
3.1

Remembrancer of Legal Affairs.

U.R. to H.D. No. 201, dated the 4th January 1951.

Legal Department.

It appears that under G.R.R.D. No. 747/45 dated the 4th September 1948, timber can be supplied to a Government Department at the scheduled rates while the scheduled rates plus 50% are to be charged for timber given to any outside agency for fabrication. Timber was supplied to the State Transport Organization in three lots namely, (1) on 9.11.1949, (2) on 17.6.1950 and 26.9.1950 and (3) on 19.12.1949. The State Transport Organization has been charged at the Scheduled Rates only. Since that organization has been constituted into a Corporation known as the Bombay State Road Transport Corporation and has ceased to be a Government Department the question has arisen whether 50% in addition to the Scheduled rates should be charged for the supply of timber made on the aforesaid dates. It is stated that no regular agreement was entered into with the State Transport Organization in respect of the rates of timber supplied to it. The P.W.T.C. was, however, informed that the scheduled rates should be charged if the timber supplied by the Forest Department was utilized by the State Transport Organization departmentally and the scheduled rates plus 50% if the material supplied was given to any outside agency of fabrication. It appears that the State Transport Organization has not given the timber supplied to it to any outside agency for fabrication. If so, according to the offer made to the P.W.T.C. the State Transport Organisation will have to be charged only the scheduled rates. It is true that the State Transport Organization is now constituted into a Corporation with effect from the 17th November 1949. But the terms offered to the P.W.T.C. do not provide that the scheduled rates would be charged to the State Transport Organization so long as it worked as a Government Department. Consequently, it appears that even though the State Transport Organization is now

converted into a Corporation it would not be possible in view of the implied contract to charge more than the scheduled rates for the supply of timber from 9.11.1949 to 26.9.1950, that is to say, for the three lots stated at page 15 ante. However, as the intention of Government is to give the timber at scheduled rates only to Government Departments the offer to supply timber to the State Transport Corporation at schedpled rates was made under a misapprehension as to its legal position, there is a moral case for charging the Corporation at 50 per cent higher rates for timber supplied after 16.11.1949. The Corporation might be persuaded to submit to the extra charge.

Sd/- R.Mukat. B.D.M.

Additional Secretary to Government.

U.R. to A. & F.D. No. 6434, dated the 23rd April 1951.

V.M.D./27.6
4a.

Legal Department.

The view expressed by the Secretary, Home Department, that it will not be correct to continue Major Walmsley on the Board when he is not the General Manager appears tobe correct. Under sub-section (1) of section 47 of the Road Transport Corporations Act, 1950, the provisions of Government Notification, Home Department, No. 1780/5, dated 16th November 1949, issued by the Government of Bombay are deemed to have been included and enacted in that section and the Corporation and the Board are deemed to have been validly constituted. The person appointed on the Board under clause (2) (b) (iii) of that Notification shall be an expert in transport or engineering and having experience in transport administration and business methods. Clause (4) inter alia provides that the member mentioned in sub-clause (b) (iii) of clause (2) shall act as the General Manager of the Board. It is clear from these provisions that the person appointed on the Board under sub-clause (b) (iii) of clause (2) shall, by virtue of such appointment, be the General Manager of the Board. Since Major Walmsley was appointed on the Board under sub-clause (b)(iii) of clause (2), he was entitled to act as the General Manager; but it appears that he was working only as the Chief Mechanical Engineer and not as General Manager. One Major General Young has now been appointed as General Manager. The appointment of Major General Young as General Manager, when Major Walmsley was by virtue of his appointment on the Board entitled to act as the General Manager, is therefore, ultra vires. If it is intended that Major

Walmsley should not work as the General Manager he will have to be removed from the Board. It would not, therefore, be legally feasible to continue Major Walmsley on the Board, and at the same time not to allow him to act as the General Manager.

Sd/-

Additional Secretary to Government.

U.R. to H.D. No. 483-Confl., dated the 25th May 1951.

V.M.D./27.6
4a.

L.D.R.I. No.15612 Dt.17.7.51.

Submitted.

The Bombay State Road Transport Corporation has requested Govt. that the corporation should be generally authorised to undertake the work of construction, improvements, reconditioning or maintenance of roads, bridges or culverts used or likely to be used for the Transport Services conducted by the corporation, either by itself or in co-operation with the Authorities in charge of the latter. Reference in this connection is made to section 31(2) of the Bombay State Road Transport Act, 1950 as well as Section 19(m) of the Road Transport Corporation Act, 1950 as enabling the Corporation to undertake such activities with the prior approval of Govt. The Home Department, however, points out that reference to section 31(2) of the Bombay Road Transport Act, 1950 is irrelevant as that Act has not been brought into force and that it is doubtful whether S. 19(m) of the Road Transport Corporation Act, 1950 would cover the Corporation request. Dy. Secy. H.D. considers that section 19(m) will have to be construed ejusdem generis with the previous clauses of section 19 and cannot be availed of for laying or repairing roads or for helping local bodies in the laying out and maintenance of roads. The R.L.A. is however requested to advise.

Sd/-

V.H.D./27.6
4c.

Office of the R.L.A.

Construction of Roads etc.

Road Transport Corporations Act, 1950.

Section 19 (1) and 19(m).

Bombay State Road Transport Act, 1950.

Section 31.

The Bombay State Road Transport Act, 1950 has not been brought in force and no reliance can be placed on section 31 of the said Act or any of its provisions for the purpose of enabling the Bombay Road Transport Corporation to spend money on roads not vesting in them or advancing loans to local authorities. Even section 31(2) of the Bombay Road Transport Act is of limited operation. It merely empowers the Corporation to undertake the work of the construction etc. of roads on such conditions as Government may determine the idea being that it was for Government to determine to what extent and in what manner the Corporation could be entrusted with such work on roads not only those which may vest in the corporation, but which may be vesting in other bodies. Section 19 of the Road Transport Corporation Act, 1950 has two sub-sections. Sub-section (1) refers to the general power of the Corporation. Clause (a) of the said sub-section empowers the Corporation to operate road transport services. Sub-section (2) which refers to various powers as being included in sub-section (1) is illustrative. In any case if the power is not specifically mentioned in sub-section (2) , clause (m) cannot be interpreted to extend such power. It is not, therefore, permissible to interpret section 19 of the Road Transport Corporation Act to include the power required by the Bombay Road Transport Corporation.

Sd/- J .R.Dhurandhar.
14.8

Remembrancer of Legal Affairs.

U.R. to H.D., No. 13158, dated the 17th August 1951.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether under the provisions of the Road Transport Corporation Act, 1950, the Bombay State Road Transport Corporation can take over the management of the Government Transport Service on behalf of Government. The Bombay State Road Transport Corporation which is to be deemed to have been constituted under the Road Transport Corporations Act, 1950, can exercise the powers specified in section 19 of the Act. Under clause (a) of sub-section (1) of that section the State Transport Corporation can, subject to the provisions of the Act, operate road transport services in the State. The expression "road transport service " as defined in section 2(e) means a service carrying passengers or goods or both by road in vehicles x for hire or reward. The G.T.S. maintains a fleet of cars, buses and lorries which are supplied to Government Officers and Departments for the carriage of personnel or goods, as the case may be, and for which charges at rates fixed by Government are recovered from the Officers or Departments concerned. The G.T.S. can in that sense be considered to be a " road transport service " within the meaning of the Road Transport Corporation Act, 1950. It would, therefore, be legally feasible for the State Transport Corporation to take over the management of the G.T.S.

Sd/- J .R.Dhurandhar.
8.9
Remembrancer of Legal Affairs.

U.R. to H.D. No. 1443, dated the 11th September 1951.

V.M.D./28.6
4c.

Office of the R.L.A.

Statement of the Case.

By their notification No. 1780/5, dated the 16th November 1949, Government of Bombay had constituted, under the provisions of the Road Transport Corporations Act, 1948, a State Road Transport Corporation, and had prescribed by the said notification its constitution, powers and functions and had also made provision for its finance, accounts and audit. Clause 15 of the said notification prescribed the general powers of the Board. Under sub-clause (2) (f) of clause 15 of the said notification it was provided that :-

"(2) Subject to the provisions of this notification, the powers conferred by sub-clause (1) may include the power-

(f) to construct and maintain roads, canals, culverts, embankments, bridges, and other means of communication as the Provincial Government may deem necessary for the development of road transport services." Chapter III of the said notification made detailed provisions for finance etc. of the corporation. Clause 23 of this x chapter provided that all the expenses on account of operational costs etc. shall be defrayed from the income of the Corporation. After defraying of all expenses the balance was to be made available for declaring a dividend on the capital supplied by the Central and Provincial Governments and under sub-clause (b) of clause 23(2) it was provided that the balance, if any, shall be distributed between the State Transport General Purposes Fund and the State Transport Road Development Fund in prescribed proportions.

2. The Road Transport Corporations Act, 1948, under which the above notification was issued was repealed by section 48 of the Road Transport Corporations Act, 1950. By section 47 of the same Act, however a saving provision was made as regards the Government Notification above referred to. It was provided:

"47(1) The body known as the Bombay State Road Transport Corporation and the Board thereof, referred to in the notification of the Government of Bombay, No. 1780/5, dated the 16th November 1949. (hereinafter referred to as "the existing

Corporation" and the "Board" respectively) shall, notwithstanding any defect in, or invalidity of, the enactament or order under which they ~~x~~ were constituted be deemed for all purposes to have been validly constituted as if all the provisions of the said notification had been included and enacted in this section and this section had been in force continuously on and from the said date . . . . . ". Sub-section (2) of section 47 of the said Act makes provisions for dissolution etc. of the existing Corporation and Board on establishment of a new Corporation in the State of Bombay under section 3 of the said Act, but no such Corporation has been so far set up. The Corporation desired to finance construction and repairs of roads vesting in local bodies such as the District Local Boards which are used or likely to be used by the transport services of the Corporation by sharing the costs and also by advancing loans to them and requested Government , ~~xxxxxxxx~~to accor their sanction to such expenditure. Government, however, considered that under the Road Transport Corporations Act, 1950, the Corporation had no power to expend money on road construction or to advance loans to local Bodies for such purposes and turned down its request (vide Govt. Letter * No. L.S.G. & P.H.D. S. 218 (2) E dt. 20.7.1951). The Corporation, however, maintained that under section 31(2) of the Bombay State Road Transport Act, 1950, the Corporation can undertake such work on such conditions as State Government may determine. It also argued that under section 19(m) of the Road Transport Corporations Act, 1950, the Corporation can be empowered with the prior approval of the State Government to undertake such work. The matter was, therefore, referred to R.L.A. who advised in his opinion * No. 13158, dated the 17th August 1951, that no reliance could be placed on the Bombay State Road Transport Act, 1950 as that Act has not been brought into force. As regards section 19(m) of the Road Transport Corporations Act, 1950, he advised:

*Slip A

*Slip B.

"Section 19 of the Road Transport Corporations Act, 1950 has two sub-sections. Sub-section (1) refers to the general

power of the Corporation. Clause (a) the said sub-section empowers the Corporation to operate road transport services. Sub-section (2) which refers to various powers as being included in sub-section (1) is illustrative. In any case if the power in not specifically mentioned in sub-section (2)), clause (n) cannot be interpreted to extend such power. It is not, therefore, permissible to interpret section 19 of the Road Transport Corporations Act to include the power required by the Bombay Road Transport Corporation."

3. The Chairman of the Bombay State Road Transport Corporation does not agree with this view. He does not agree with Government that if the provisions of Government Notification of 16th November 1949, and those of the Road Transport Corporations Act, 1950, conflict, the latter will prevail. He considers that as the Act has validated the notification, the provisions of the Notification will continue to prevail until rules under the Road Transport Corporations Act are finalised and present Corporation is superseded by a fresh one. The Chairman, therefore, considers that it would be competent to the Corporation to incur expenditure on Roads with the sanction of Government.

4. The view taken by the Chairman does not appear to be correct. It in true that by section 47 of the Road Transport Corporations Act, 1950, the Bombay Government Notification No. 1780/5, dated the 16th November 1949 has been saved and it is provided that the Corporation shall "be deemed for all purposes to have been validly constituted as if all the provisions of the said notification had been included and enacted in this section." But it does not appear that these provisions will have the effect of conferring on the Corporation greater powers than those conferred by section 19. The Chairman appears to contend that the provisions of section 47 preserve the provisions of the Notification for all purposes. However, looking to the provisions as a whole, it seems that they have been preserved for giving validity to the constitution of the Corporation and the Board. It is, therefore, considered that the

powers of the Corporations will be governed by the provisions of the Act and provisions of the notification which are inconsistent with those provisions will to that extent be superseded. The Act of 1950 does not empower the Corporation to incur expenditure on road construction and it will not, therefore, be possible for the Corporation to spend money for that purpose (cf. s. 31 of the Act). Moreover, section 30 of the Road Transport Corporations Act provides that after making provision f for payment of interest and for depreciation, reserve and other funds, the Corporation may utilise such percentage of its net annual profits as may be specified in this behalf by the State Government for the provision of amenities to the passengers using the road transport services, welfare of labour employed by the Corporation and for such other purposes as may be prescribed with the previous approval of the Central Government and the balance shall be made over to the State Government for the ~~purpose of road improvement~~. purpose of road development. As the balance is to be made over to Government for utilization of the am road development purposes, it will not be open to the Corporation to spend that amount itself. Moreover, it would not be proper for Government to authorise the Corporation to spend that money on roads vesting in third bodies like the Local Boards when the money is needed for the development of roads vesting in Government itself. The Government, therefore, appears to be legally justified in turning down the Corporations request. As, however, the question is of general importance, the Advocate General is requested to favour Government with his opinion in the matter.

Sd/- J.R.Dinnandhar.
11.10

Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay No. 16156, dated the 11th October 1951.

V.H.D./23.6
40.

No. 15 of 1951.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 22nd October 1951.

With Reference to Unofficial Reference to the Advocate General, Bombay, No. 16156, dated the 11th October 1951, I may state that the Bombay State Road Transport Corporation (hereinafter referred to as "the Corporation") was constituted by the Notification of the Bombay Government dated 16th November 1949 issued in exercise of the powers vested in the Government of Bombay under the Road Transport Corporation Act, 1948. (Act XXII of 1948). Under Clause 15(2) (f) of the Notification, the Corporation had inter alia, the power, "to construct and maintain roads etc., as the Provincial Government may deem necessary for the development of the Road Transport Services." Under Clause 23(2)(b) of the Notification the balance of the income of the Corporation was to be distributed between the State Transport General Purposes Fund and the State Transport Road Development Fund in the proportion provided in the said Clause. By Section 48 of the Road Transport Corporation Act of 1950 the earlier Act of 1948 (Act 32 of 1948) was repealed. Under Section 47 of the New Act the Corporation, notwithstanding any defect in, or invalidity of, the enactment or the Order under which it was constituted, was to be deemed for all purposes to have been validly constituted as if all the provisions of the Notification, by which it was constituted, were included and enacted in Section 47 of the Act.

Section 19 of the Road Transport Corporation Act, 1950 defined the powers of the Corporation. The powers defined in this Section do not include power to construct

construct and or maintain roads. Section 19(2)(g) which is in general terms, cannot be interpreted so as to include the power to construct or maintain roads, which is not covered by Sub-section (1) of the Section. Under Section 30 of this Act the balance of the net annual profits of the Corporation are to be made over to the State Government for the purpose of Road Development. A Corporation constituted under this Act has no power to construct or maintain roads. Section 47 of the Act, which is a saving Section, merely preserves the Corporation constituted under the 1948 Act, and the object of including the provisions of the Notifications in that Section is to remove doubts as to the validity of the constitution of the Corporation by reason of defect or invalidity of the provisions of the 1948 Act. The Corporation so preserved normally should not have larger powers than those of a Corporation which can be constituted under the provisions of the 1950 Act.

Under Section 31(2) of the 'Bombay State Road Transport Act of 1950 (Bombay Act 25 of 1950) the Corporation may inter alia, undertake the work of construction, improvement or maintenance of roads, used or likely to be used by the transport service conducted by the Corporation on such conditions as the State Government may determine. This Section however cannot be relied upon as the provisions of this Act have not yet come into force.

I agree with the opinion given by the Remembrancer of Legal Affairs viz. that the Section 19 of the Road Transport Corporation Act of 1950 cannot be so interpreted as to include the power to expend money on road construction or to advance loans to Local Bodies for such purposes, as contended by the Corporation.

Sd/-

ADVOCATE GENERAL OF BOMBAY.

V.M.D./28.6
/c.

Legal Department.

Submitted with reference to U.R. to the Advocate General , dt. 11.10.1951 at p. 15 ante.

2. Please see the Advocate General's opinion No. 15 of 1951 at pp.17-29 ante. He agrees with the R.L.A. A copy of the Advocate General's opinion to-gether with the Statement of the case prepared for him may be forwarded to H.D.

Sd/-

R.L.A. The reference ~~has~~ made to the Advocate General was made at the suggestion of H.M. F.D. to whom the papers will have to be submitted.

Sd/- J.R. Dhurandhar.
23.10

V.M.D./23.6
40.

Office of the F.L.A.

As desired by H.M., F.D. the Advocate General, Bombay has been consulted. His opinion and the Statement of the case prepared for him are appended herewith.

Sd/- J.R.Dhurandhar.
24.10
Remembrancer of Legal Affairs.

H.M., F.D.

Suggest that the Chirman of the Board be informed accordingly.

Id.
25.10.51.

Id.

H.M., R.D. Id. H.R.D.
26.10

This may now be sent to H.D.

Id. J.R.D.
27.10

U.R. to H.D. No. 17196 dt. 29.10.51.

V.M.D./28.6
40.

OFFICE OF THE R.L.A.

The question referred to the R.L.A. for consideration is whether under the provisions of the Road Transport Corporations Act, 1950, it would be feasible for Government to establish Divisional Claims Settlement Committees and a Provincial Claims Settlement Committee for the purpose of bringing about early settlement of claims for compensation on account of loss or injury sustained by third persons in accidents in which the State Transport vehicles are involved.

2. The sub-section (2) of section 41of the Road Transport Corporations Act, 1950, the State Government has got power to exempt the motor vehicles of the Corporation from the operation of the provisions of Chapter VIII of the Motor Vehicles Act, 1939. However, such exemption cannot be granted unless the Corporation has established a fund for meeting any liability arising out of the use of any vehicle of the Corporation which the Corporation or any person in the employ of the Corporation may incur to third parties. This section thus authorises the State Transport Corporation to establish and maintain a fund which shall be utilised for meeting the liabilities arising out of accidents towards third parties. The Committees proposed to be appointed will aim at early settlement of all such claims. Presumably, persons who approach the Committees for settlement of their claims will not be debarred from approaching Civil Courts for redress if they are not satisfied with the compensation awarded by the Committees as stated at 'A' on page 80 of the H.D. office note. The purpose which the Committees will be achieving will be the settlement of claims out of courts. The establishment of such Committees will, it appears, be in furtherance of the object of section 41; and there would appear no legal objection to the establishment of such committees and the framing of suitable rules for thier working etc.under section 44(2)(n) read with proviso to section 41(2).

Sd/- J.R.Dharandhar.
19.11.
Remembrancer of Legal Affairs.

V.H.D./28.6 U.R. to H.D. No. 13556, dated the 20th November 1951.